



Department of Justice
Canada

Ministère de la Justice
Canada

s.21(1)(a)
s.23

FOR APPROVAL
NUMÉRO DU DOSSIER/FILE #: 2016-000667
COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: PROTECTED B

TITRE/TITLE: Proposed Response to the Standing Joint Committee for the Scrutiny of
Regulations, Re: SOR/2014-304, *Samples of Bodily Substances Regulations*
(*R. v. Shoker Act*)



**Pages 2 to / à 37
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(a), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

QUESTION PERIOD NOTE

Date:
Classification:
CCM#:

2016-03-23
PROTECTED
2016-006229

Question Period Note

RETIREMENT OF JUSTICE CROMWELL

ISSUE:

On March 22, 2016, the Supreme Court of Canada announced Justice Cromwell's retirement, effective September 1, 2016. The Government will need to establish a process for the selection of his replacement. The Court will wish an appointment in time for its fall session.

PROPOSED RESPONSE:

Retirement of Justice Cromwell:

- I thank Justice Cromwell for his distinguished service to Canada, both on and off the Bench. He has made remarkable contributions to the law and to the profession throughout his career, both as a professor and a jurist.
- Over the past seven and a half years, he has brought a thoughtful and practical perspective to his work on the Supreme Court. He has also been a national leader on access to justice.
- I will have more to say on this in the weeks ahead. In the meantime, I thank Justice Cromwell for his service and wish him the best.

If Pressed on Appointment Process:

s.21(1)(a)

BACKGROUND:

On March 22, 2016 the Supreme Court of Canada announced that Justice Thomas Cromwell will be retiring from the court effective September 1, 2016. The Court will wish for an appointment to occur ideally in time for its fall session, which commences October 3, 2016.

The Liberal Party platform, echoed in the Minister's mandate letter, promised that:

"We will work with all parties in the House of Commons to ensure an inclusive, representative, transparent, and accountable process to advise on appointments to the Supreme Court. This includes proper consultation with the provinces, provincial bar associations, provincial appellate and superior courts, and the Chief Justice of the Supreme Court. This process would also ensure judicial appointments to the Supreme Court are functionally bilingual."

Since 2005, successive governments have used various processes for filling Supreme Court of Canada (SCC) vacancies. Some involved an advisory committee, composed exclusively or partially of parliamentarians, to recommend a short-list of candidates. In one instance, the Minister appeared before a parliamentary committee to explain the government's choice; in other cases, the nominees themselves appeared. For the three most recent appointments, neither an advisory committee nor a parliamentary hearing was used.

In 2004, the House Justice Committee examined the SCC appointment process and recommended both interim and longer-term measures to strengthen transparency and accountability. The dissenting (Conservative) report argued that the majority of recommendations did not go far enough.

The Commissioner of Official Languages and others have argued for a bilingual requirement for SCC judges, to ensure they can read written pleadings and understand oral arguments in the official language in which they are presented, without the need for translation or simultaneous interpretation. Two related Private Members Bills (PMB) were introduced in recent years, but not adopted: Bill C-548, *An Act to amend the Official Languages Act (understanding the official languages – judges of the Supreme Court of Canada)* introduced in May 2008 and Bill C-208, *An Act to amend the Supreme Court Act (understanding the official languages)* introduced in June 2011. The most recent iteration of this PMB, Bill C-203, was introduced on December 9, 2015, by the NDP member for Drummond, François Choquette.

CONTACTS:

Prepared by:
Catherine McKinnon, Senior Counsel, Judicial
Affairs, PLLSS

Tel. No.:
613-954-1921

Approved by:
Laurie Wright, ADM
PLLSS

Tel. No.:
613-941-7890

NOTE POUR LA PÉRIODE DE QUESTIONS

Date :
Classification :
Nº de CCM :

2016-03-23
PROTÉGÉ
2016-006229

Note pour la période de questions

RETRAITE DU JUGE CROMWELL

QUESTION :

Le 22 mars 2016, la Cour suprême du Canada a annoncé que le juge Cromwell prendrait sa retraite le 1^{er} septembre 2016. Le gouvernement devra établir un processus pour la sélection de son remplaçant. La Cour souhaitera qu'un nouveau juge soit nommé à temps pour sa session d'automne.

RÉPONSE PROPOSÉE :

Retraite du juge Cromwell :

- **Je remercie le juge Cromwell pour les services distingués qu'il a rendus au Canada, tant au sein de la magistrature qu'à l'extérieur. Il a apporté des contributions remarquables à sa profession tout au long de sa carrière, tant à titre de professeur qu'à titre de juriste.**
- **Au cours des dernières sept années et demie, il a apporté un point de vue réfléchi et pratique à son travail à la Cour suprême. Il fut également un chef de file national dans le dossier de l'accès à la justice.**
- **J'en aurai davantage à dire à ce sujet dans les semaines à venir. Entre-temps, je remercie le juge Cromwell pour ses services et je lui souhaite la meilleure des chances.**

Si des questions sont posées sur le processus de nomination :

s.21(1)(a)

BACKGROUND:

On March 22, 2016 the Supreme Court of Canada announced that Justice Thomas Cromwell will be retiring from the court effective September 1, 2016. The Court will wish for an appointment to occur ideally in time for its fall session, which commences October 3, 2016.

The Liberal Party platform, echoed in the Minister's mandate letter, promised that:

"We will work with all parties in the House of Commons to ensure an inclusive, representative, transparent, and accountable process to advise on appointments to the Supreme Court. This includes proper consultation with the provinces, provincial bar associations, provincial appellate and superior courts, and the Chief Justice of the Supreme Court. This process would also ensure judicial appointments to the Supreme Court are functionally bilingual."

Since 2005, successive governments have used various processes for filling Supreme Court of Canada (SCC) vacancies. Some involved an advisory committee, composed exclusively or partially of parliamentarians, to recommend a short-list of candidates. In one instance, the Minister appeared before a parliamentary committee to explain the government's choice; in other cases, the nominees themselves appeared. For the three most recent appointments, neither an advisory committee nor a parliamentary hearing was used.

In 2004, the House Justice Committee examined the SCC appointment process and recommended both interim and longer-term measures to strengthen transparency and accountability. The dissenting (Conservative) report argued that the majority of recommendations did not go far enough.

The Commissioner of Official Languages and others have argued for a bilingual requirement for SCC judges, to ensure they can read written pleadings and understand oral arguments in the official language in which they are presented, without the need for translation or simultaneous interpretation. Two related Private Members Bills (PMB) were introduced in recent years, but not adopted: Bill C-548, *An Act to amend the Official Languages Act (understanding the official languages – judges of the Supreme Court of Canada)* introduced in May 2008 and Bill C-208, *An Act to amend the Supreme Court Act (understanding the official languages)* introduced in June 2011. The most recent iteration of this PMB, Bill C-203, was introduced on December 9, 2015, by the NDP member for Drummond, François Choquette.

PERSONNES-RESSOURCES :	Nº de tél. :	Approuvée par :	Nº de tél. :
Préparée par : Catherine McKinnon, Avocate-conseil principale, Affaires juridiques, SDPSL	613-954-1921	Laurie Wright, SMA SDPSL	613-941-7890



SCENARIO
NUMERO DU DOSSIER/FILE #: 2016-006130
COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: Protected B

TITRE/TITLE: Meeting with the British Columbia Civil Liberties Association

SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY

- You are meeting with representatives of the British Columbia Civil Liberties Association (BCCLA) on Tuesday, March 29, 2016, at 9:30 a.m. in Vancouver. The topic of discussion at this meeting is physician-assisted dying and the Government's response to *Carter*. It is possible that the BCCLA will also touch upon solitary confinement.
- Talking points regarding *Carter* and the Government's response is attached at Annex 1. Annex 2 includes background information about the BCCLA and general talking points that focus on your priorities and vision as Minister of Justice. Biographies of BCCLA representatives are provided at Annex 3.
- The BCCLA was a claimant in *Carter*, they have met with the federal External Panel, and have made submissions at the Special Joint Committee on Physician-Assisted Dying.
- The BCCLA's position is that physician-assisted dying should be available to all individuals suffering from a grievous and irremediable medical condition, whether or not that condition is terminal. They also support extending eligibility to mature minors, mental illnesses as the sole condition underpinning the request, and advance requests.
- As no bill is expected to be introduced in Parliament before the meeting, it is not possible to share details of the anticipated legislation.
- Key government messages could be conveyed to the BCCLA, as well as highlighting the future opportunity for them to participate in the Parliamentary study of the anticipated federal legislation later this spring.

Soumis par (secteur)/Submitted by (Sector):

Policy Sector

Responsable dans l'équipe du SM/Lead in the DM Team:

Caroline Leclerc

Revue dans l'ULM par/Edited in the MLU by:

Olivier Cullen



Protected A
SCENARIO

2016-006130

MEMORANDUM FOR THE MINISTER

Meeting with the British Columbia Civil Liberties Association on Physician-Assisted Dying

ISSUE

The purpose of this note is to provide information and background in support of your meeting with the British Columbia Civil Liberties Association (BCCLA) on March 29, 2016 on physician-assisted dying.

Note that the BCCLA is currently involved in litigation against the Attorney General of Canada in which it challenges the constitutionality of sections of the National Defence Act that authorize the Communications Security Establishment (CSE) to incidentally intercept the private communications of persons in Canada. The BCCLA also challenges ministerial directives that permit CSE's collection of metadata. The BCCLA seeks a declaration that the impugned sections of the Act, as well as the associated ministerial authorizations and metadata directives, unjustifiably infringe the Charter. The trial in this matter is not expected to occur until at least late 2016 or early 2017. At present, the Federal Court is dealing with the Attorney General's application under section 38 of the *Canada Evidence Act* to maintain the confidentiality of certain information due to national security concerns. That application will be heard in June 2016.

The Minister of National Defence is responsible for the CSE, and is the lead Minister responsible for this litigation. It has not yet been determined whether potential reform to CSE's legislative mandate will form part of the Government's proposed consultations on issues relating to national security.

It is recommended that, if the BCCLA wishes to discuss this litigation, you reiterate that it is not appropriate to discuss ongoing litigation and refer any questions about the CSE's mandate or activities to the Minister of National Defence.

BACKGROUND

The BCCLA represents approximately 1,000 members, Josh Paterson is the Executive Director and Grace Pastine is the Litigation Director.

The BCCLA was one of the claimants in the *Carter v. Canada* case that culminated in the Supreme Court of Canada (SCC) unanimously declaring that the *Criminal Code* prohibitions against physician-assisted dying (section 14 and paragraph 241(b)) are unconstitutional insofar as they prohibit physician-assisted death for competent adults who: 1) clearly consent to die;

and 2) have a grievous and irremediable medical condition (including an illness, disease or disability) that causes them enduring and intolerable suffering.

Representatives of the BCCLA appeared before the Special Joint Committee on Physician-Assisted Dying (SJC) on February 1, 2016 and also met with the External Panel on Options for a Legislative Response to *Carter v. Canada* on October 28, 2015.

BCCLA's position in Carter v. Canada

In April 2011, the BCCLA, with Lee Carter and others, filed a civil claim in the Supreme Court of British Columbia seeking a declaration that the *Criminal Code* prohibitions on assisted suicide and homicide do not apply to physician-assisted dying. They argued that:

- The prohibitions cause people who are suffering to have a cruel choice between a protracted or painful death, or ending their own lives earlier than they would like to.
- The prohibitions cause individuals to suffer from the knowledge that they lack the ability to bring a peaceful end to their lives at a time, and in a manner of their own choosing.
- There is no ethical difference between physician-assisted dying, and other end of life care practices that can shorten life, such as the withdrawal of medical treatment.
- There are similarities in terms of the risks associated with physician-assisted dying and other end of life care practices (e.g., risk of being coerced by a family member exists for those who terminate treatment).
- Standard medical informed consent assessments can effectively sort out the strong-willed and self-knowing from the vulnerable or the coerced.
- There is no evidence of abuse or a “slippery slope” in permissive jurisdictions.
- Regulation of physician-assisted dying can adequately reduce risk while enabling mentally competent adults who are grievously and irremediably ill and suffering unbearably to choose the time and manner of their deaths

The BCCLA's position in the *Carter* litigation was that physician-assisted dying should be permitted, and that vulnerable individuals could be protected from risks through regulation and reliance on standard medical informed consent assessments.

BCCLA's input into the External Panel's consultation

The External Panel's Report highlights the following key points raised at the meeting with the BCCLA:

- Canadians suffering unbearably at the end of life should have the right to choose a dignified and peaceful death;
- Kay Carter's story was less about pain management than independence and dignity, which are less tangible concepts;
- Courts have done the government's work for it —leave the regulation to provincial health legislative bodies;
- Vulnerable people are not at greater risk of physician-assisted dying;
- “Slippery slope” is illusory— there is no evidence to support it;
- Decision should be between physician and patient;
- No physician has ever been under any obligation to perform this service; and

- Publicly funded health care system should not be allowed to contract out any services to religious organizations that oppose physician-assisted dying.

The BCCLA expressed the view that there should be “no barriers erected to qualifying individuals accessing physician-assisted dying,” stressing that such barriers might be deemed unconstitutional.

BCCLA's submissions before the SJC

The BCCLA highlighted the divided jurisdictional nature of physician-assisted dying. It stated that the SCC did not mandate the regulation of physician-assisted dying, and warned that doing so could lead to *Charter* challenges. The BCCLA's position was that Parliament should amend the *Criminal Code* to permit physician-assisted dying, and leave regulation up to provincial medical regulatory bodies. Physician-assisted dying should be regulated in the same manner as current end-of-life decision-making (though they do not support restricting eligibility to terminal cases), and could be governed by current informed consent laws. The BCCLA expressed support for extending eligibility to include mature minors, mental illnesses as the sole medical condition underpinning the request, and advance requests for patients who would no longer have capacity at the time of the assisted death. They opposed any prior review mechanism outside the patient and single physician relationship.

CONSIDERATIONS

The BCCLA will likely reiterate their previously-articulated positions and preferences for the legal regime going forward. At the time of the scheduled meeting, little information on the anticipated legislation can be shared with the BCCLA, as it has not yet been introduced in Parliament. The Government's key messages can be conveyed, along with messages that would be of interest to the BCCLA, such as the opportunity for their continued involvement as witnesses in the Parliamentary process. Talking Points are attached at Annex 1.

CONCLUSION

Your meeting with the BCCLA enhance a positive rapport with the association. It is an opportunity to generally explain your priorities and your vision as Minister of Justice.

ANNEXES

Annex 1: Talking Points specific to physician-assisted dying and the Government Response to *Carter*
Annex 2: Background information on the BCCLA
Annex 3: Biographies of BCCLA Directors

PREPARED BY

Julie Besner
Counsel
Criminal Law Policy Section
613-957-4209

Jay Potter
Counsel
Criminal Law Policy Section
613-853-3271



Protected A
2016-006130

Talking Points

March 29, 2016 Meeting with the BCCLA

- I appreciate the opportunity to meet with you to hear your views regarding a Canadian approach to physician-assisted dying.
- I acknowledge your participation in the *Carter* case and subsequent consultations, including the federal External Panel, and the Special Joint Committee hearing on February 1, 2016.
- We respect the Supreme Court of Canada's judgment in *Carter* and remain committed to developing a thoughtful, compassionate, and well-informed response to the decision.
- Physician-assisted dying raises many difficult issues of great importance to all Canadians. It involves matters of life and death, questions of human dignity and suffering, and respecting patient autonomy while affirming the inherent value and equality of the lives of all Canadians.

- We will soon bring forward our response and intend to respect the timelines specified by the Supreme Court.
- At this time, I am not able to share any details regarding what the federal legislation may or may not include.
- Your organization may have a formal opportunity to provide its perspectives on the federal legislation when it is studied in the House of Commons and/or the Senate this spring.

PREPARED BY

Julie Besner
Counsel
Criminal Law Policy Section
613-957-4209

Jay Potter
Counsel
Criminal Law Policy Section
613-853-3274

British Columbia Civil Liberties Association Background Information

The BCCLA was established in 1962 and claims to be the oldest and most active civil liberties group in Canada. The BCCLA is funded by the Law Foundation of BC and by private citizens. It describes its mandate as being “to preserve, defend, maintain and extend civil liberties and human rights in Canada.” The BCCLA is an autonomous, non-partisan charitable society. While the BCCLA works cooperatively with other groups on common causes, it describes itself as unaffiliated with any other organization or political group.

The BCCLA achieves its mandate through a number of programs:

- Advocacy in Action: The BCCLA provides free assistance to individuals who request information or have complaints about civil liberties violations by government, employers and other organizations. These individuals are often burdened with poverty, homelessness, addiction, discrimination, and physical or mental disabilities that limit their ability to self-advocate.
- Public Policy: The BCCLA works on policy briefs and meets with government and private sector officials to persuade them to change laws or policies that are seen to infringe on civil liberties, and to develop new laws and policies that protect fundamental rights and freedoms.
- Community Education: The BCCLA provides free publications to the public and offers a speakers’ bureau where BCCLA staff talk to students and community groups about civil liberties and human rights.
- Justice Program: The BCCLA challenges laws in court. Recently the BCCLA sought an injunction prohibiting the Canadian Forces from transferring detainees into the custody of Afghan secret police due to the risk of torture. The association participated in the public inquiry into the death of Frank Paul, a 47-year-old Mi’kmaq man dumped by Vancouver police in a downtown alley where he died of exposure. Most notably, the BCCLA was successful at the BC Supreme Court in *Carter v. Canada*, which challenged the laws restricting an individual’s right to choose a death with dignity.



Director Profiles

Lindsay M. Lyster, President



Lindsay M. Lyster, President, is a partner in the Vancouver law firm of Moore Edgar Lyster. She served as a member of the British Columbia Human Rights Tribunal between 2002 and 2010, where she adjudicated and mediated human rights disputes. She was the Policy Director of the BCCLA before joining the Tribunal. Lindsay practiced labour, employment and public law with a major national law firm for seven years, appearing before all levels of courts and tribunals. Lindsay's legal practice includes acting for employees and trade unions in labour, employment and human rights matters. She also conducts third party investigations and mediations.

Lindsay has a particular interest in administrative and constitutional law, having appeared before the Supreme Court of Canada in leading human rights and Charter cases. She taught Administrative Law, Federalism, Charter Litigation, and Human Rights in the Workplace at UBC Law School. Lindsay graduated from UBC Law School in 1991 as the gold medalist, following which she clerked for Madam Justice McLachlin at the Supreme Court of Canada, before being called to the bar in 1993. Lindsay is a frequent lecturer in labour, human rights, employment and administrative law. She is on the Executive of the Administrative Law and Human Rights Sections of the CBA – BC Branch.

Lindsay can be contacted at: (604) 689-4457
or by e-mail at: president@bccla.org

Alan Rowan, Treasurer



Presently semi-retired, I was for many years involved in the local renovation business, and have an extensive background in the British Columbia shellfish aquaculture industry, both as an employee and as an owner.

I come by my passion for civil liberties and civil rights honestly, as my father is Bob Rowan, one of the founders of the BCCLA, and a past president. Many early meetings were held at our house, and I carry fond memories of far-ranging discussions covering topics that were engagingly foreign to my then teen-aged years. I was then and continue to be deeply committed to the ongoing fight for real equality for all men and women, free speech and a free press, and the right to freedom of expression.

My service on the Board of the Association began over twenty years ago, and I have proudly served as the Association's Treasurer since 1999.

Warren Bourgeois



Warren Bourgeois is a professor of philosophy who received his doctorate at the University of California, Irvine. He has taught at the University of Salzburg, Austria, the University of California, San Diego, the University of British Columbia, and now teaches at Kwantlen University College where he chairs the Research Ethics Board.

Since 1977 he has been a director of the BC Civil Liberties Association. He has helped to found and served on two hospital ethics committees locally. Among his published writings is the book *Persons: What Philosophers Say About You* released in its second edition by Wilfrid Laurier University Press in 2003. His current project is an online textbook in Bioethics.

Alister Browne



Alister Browne PhD (philosophy). Clinical Associate Professor & Ethics Theme Director, Faculty of Medicine, UBC. Member, Ethics Committees of Vancouver Hospital, GF Strong and Geo. Pearson Centres, BC Children's Hospital, Sunny Hill Hospital, Burnaby Hospital. Canadian Correspondent, Cambridge Health Care Ethics Quarterly. Canadian Editor, Health Care Ethics Forum.

Recently retired as Ethics Consultant and Chair of the Ethics Committee, Vancouver Hospital, and as Chair, Department of Philosophy, Langara College. Alister has a wife, Missy, and a daughter, Katharine, who are both philosophers, grows roses competitively, and plays softball increasingly non-competitively.

Annex 3

Michael Byers



Michael Byers holds the Canada Research Chair in Global Politics and International Law at the University of British Columbia. Prior to 2005, he was Professor of Law and Director of Canadian Studies at Duke University; from 1996-1999 he was a Fellow of Jesus College, Oxford University.

Professor Byers writes and teaches on issues of military force, terrorism, human rights, international law, and Canada U.S. relations. He is the author of *War Law: Understanding International Law and Armed Conflict* (Douglas & McIntyre), *Custom, Power and the Power of Rules* (Cambridge University Press) and *Intent for a Nation: What is Canada For?* (Douglas & McIntyre, June 2007). He is the editor of *The Role of Law in International Politics* (Oxford University Press) and *United States Hegemony and the Foundations of International Law* (Cambridge University Press). Dr. Byers is a regular contributor to the *London Review of Books*, *Globe and Mail*, and *Toronto Star*.

Larry Cohen



Larry Cohen has background in the practice of Criminal Law, teaching at the UBC Law school, and as a Legal Services Society (Legal Aid) administrator. As a businessman, he has been a commercial fisherman, a restauranteur, and a real estate developer. As well, he has received a Masters of Fine Art from UBC, is a practicing sculptor, and has taught foundation art.

Tom Gore



Tom Gore has worked as a photographer ever since spending a summer in the mid sixties photographing in eight European countries. He joined the University of Victoria in the seventies to run what became the Advanced Imaging Laboratory. At the same time Gore curated fifty photographic exhibitions at Open Space Gallery, consulted for the Winnipeg Art Gallery, wrote many articles for Arts West Magazine and taught photojournalism in the UVic Writing Department. He continues to photograph and exhibit and been published in the U.S., Europe and Japan. Subjects of his photography include English 18th century gardens, Venice, Rome and old Paris while recent work is mostly computer based. Gore has served on the boards of the Communication Arts Society, the Society for Photographic Education, the Professional Employees Association and the British Columbia Civil Liberties Association. He has written and edited a number of books about photography and has received several Canada Council grants.

Jason Grati, Secretary



Jason Grati is a Vancouver lawyer practicing in the area of criminal and civil litigation. He has appeared at all levels of Court, from traffic Court to the Supreme Court of Canada and was counsel to the BC Civil Liberties Association in Vancouver Sun v. O.N.E. and Charkaoui v. Minister of Citizenship and Immigration. Among his accomplishments, Jason assisted Robert Latimer in obtaining release into parole, and assisted in preventing Shell Canada Energy from engaging in Coal Bed Methane extraction in the Sacred Headwaters (Tahltan) territory of Northern British Columbia.

Jason is a graduate of U of T Law School, where he was awarded the Torys Prize in Private International Law, the Jeffrey W. Egner Prize in Labour Law, and the Ting Sum Taing Prize in International Law and Finance. Before law school, Jason obtained an M.A. in philosophy from the University of Waterloo. In 2005, Jason was appointed as Adjunct Professor at the University of British Columbia, where he co-teaches a seminar in Public Law. Jason served as President of the BCCLA from 2005 to 2008, and loved almost every minute of it. In 2007, he joined the Board of Directors of Pivot Legal Society. Jason's website can be found at: www.gratlandcompany.com

Rob Holmes



Rob Holmes is a lawyer practicing trial and appellate civil and commercial litigation and arbitration with Holmes & King in Vancouver, B.C. He did undergraduate studies at U.B.C. (B.A. Poli. Sci 1978; LL.B. 1981), clerked for the B.C. Court of Appeal, was called to the Bar in B.C. in 1983 and thereafter did graduate studies in law at Yale (LL.M., 1984). He has taught as an Adjunct Professor at U.B.C. Law School and has written and delivered many papers and presentations on a variety of legal topics.

He is active in the Canadian Bar Association and the Trial Lawyer's Association of B.C. In 1981 Rob wrote a position paper for the BCCLA on administrative agency investigation powers. Rob was counsel for the BCCLA in the 1980's in the Dixon v. AGBC litigation in which the provincial electoral boundaries laws were held to be an unconstitutional violation of Charter voting rights and in 1992 in the Carter v. AG Saskatchewan reference to the Supreme Court of Canada concerning Saskatchewan's electoral boundaries. He was also a director and secretary of the BCCLA in the 1980's.

Jacob Hunter

Jacob Hunter is an advocate for drug policy reform and social justice based in Vancouver, British Columbia. Jacob is the Policy Director of the Beyond Prohibition Foundation and sits on the Board of Directors of the Pivot Foundation. Jacob is also the founder and administrator of the activist website WhyProhibition.ca as well as a member of RightsCity.org editorial board. Though he considers himself a non-partisan progressive, Jacob has volunteered on various political campaigns since 2000, working with likeminded candidates regardless of party affiliation. During the most recent provincial election Jacob served as Campaign Manager for the Green Party in Vancouver-Fraserview, while during the most recent federal election, Jacob served as Communications Director for the NDP in West Vancouver-Sunshine Coast-Sea to Sky Country. Jacob attended the University of Northern British Columbia where he studied political science and economics. Jacob lives with his girlfriend, Nicole Seguin, and two dogs, in the West End of Vancouver.

Stephen Katz



Stephen Katz, B.A., LL.B. University of Florida, LL.M.(Tax) New York University. President of Stephen Katz Limited (A Vancouver firm specializing in U.S.-Canadian income tax matters). Formerly, Associated with Dewey, Ballantine, Bushby, Palmer & Wood, New York City. Instructor at Law, University of Florida. Author of U.S. Citizens Resident in Canada and the Foreign Tax Credit, Tax Management International Journal (1989); Double Exposure: The Taxation of U.S. Citizens Resident in Canada, Pacific Business & Law Institute Conference (1991); and, The Impact of Article (9) of the Third Protocol to the Canada-U.S. Tax Convention on Cross-Border Pension Benefits, Pacific Business & Law Institute Conference (1995). Taxation of U.S. Citizen Resident in Canada, B.C. Institute of Chartered Accountants (1999).

Ed Levy



After obtaining a PhD, Ed Levy taught philosophy of science at the University of British Columbia from 1967-1988. In 1988 Ed joined QLT Inc., a biotechnology company that developed a treatment, now used worldwide, for age-related macular degeneration, the main cause of vision loss among the elderly.

At the end of 2002 Ed retired from QLT and became an adjunct professor at the W. Maurice Young Centre for Applied Ethics at UBC. Ed is a mentor with InnoCenter Alberta and he is a member of the boards of several technology companies and Genome B.C. Ethics Advisory Committee, as well as of some non-profits, including BCCLA and the PIVOT Foundation.

Richard Marcuse



Growing up in a political family, Richard Marcuse has been an advocate for civil liberties and human rights since he was young.

Trained in social anthropology at the University of California, Berkeley, Richard has worked in Canada and abroad as researcher, administrator, university lecturer, fundraiser, editor and consultant to the not-for-profit sector. The settings have ranged from the Institute of Criminology at the University of Tel Aviv to the maximum security B.C. Penitentiary (The Pen), from Oxfam Canada to Canadian Actors' Equity Association.

In 1980, he and his life partner, Judith Marcuse, established the Repertory Dance Company of Canada, a professional touring organization that Richard administered for a decade. Before his election to the BCCLA board in 2014, he edited *Racial Profiling: A Special BCCLA Report on Racial Profiling in Canada*. More recently, he collaborated with Judith on writing *Art for Social Change: A Call for Partnerships*, an essay in *Creative Art in Research for Community and Cultural Change* (2011). Now in semi-retirement, Richard continues to accept consulting and editing projects.

J.S. Russell



J.S. Russell received his Ph.D. from Cornell University in 1994 and then did a year of post-graduate work at Oxford University. He headed the B.C. Civil Liberties Association's office staff from 1980, resigning as Executive Director in 1988 to pursue graduate studies in philosophy at Cornell. He is now an instructor in the philosophy department at Langara College. He has been Ethics Advisor to the University of British Columbia Clinical Research Ethics Board since November 2001. He has published articles in moral and political philosophy and philosophy of law and has taught philosophy and been an adjunct professor of law at the University of British Columbia.

A current research interest is in philosophy of sport where he has published several articles and serves on the editorial board of the *Journal of the Philosophy of Sport*. He is currently completing a manuscript on metaethics and is co-editing with Andrew Irvine a wide-ranging collection of essays by Canadian philosophers that are addressed to non-specialist audiences. In his spare time, Russell coaches little league baseball and, when any time is left over after that, he rides his motorcycle. He has a peculiar cognitive disturbance (which is perhaps an as-yet unlabelled character disorder). When he thinks of philosophy, he thinks of baseball; and when he thinks of baseball, he thinks of philosophy. He is married to Joy Russell and has two children, Nicholas and Keith.

Tom Sandborn



Tom Sandborn is a Vancouver based writer, organizer and consultant. Born in Alaska, he has lived in the Lower Mainland since 1967, when a foreign policy dispute with the Kissinger Administration over the war in Vietnam brought him to Canada. Now a Canadian citizen, he has been a youth worker, a gestalt therapist and encounter group leader, a truck, bus and taxi driver, a bar tender and warehouse worker, a journalist, educator, social worker, broadcaster, fundraiser and organizer. Raised in the wilderness by wolves, Sandborn is a sort of feral author who owes most of what he knows to the generous efforts of feminist women, poets of all genders, renegade nuns and Jesuits, itinerant anarchists, Reds and agitators of all sorts. His work has appeared in the Vancouver Sun, the Georgia Straight, the Democrat, the Globe and Mail, Compass and Makara magazines, Xtra West, the Tyee and the Straight Goods on line, the Columbia Journal, the Vancouver Review and the Rain, as well as in broadcast form on CBC radio. He currently serves on the boards of directors for the BC Civil Liberties Association and the Judith Marcuse Project and has just completed three years of ongoing work to address sweat shop labour abuses both locally and around the world. During his decades in Canada, he has done extensive political and community organizing around issues of male violence and women's liberation, first nations land claims, peace, environmental crisis, racism and civil liberties. Together with his beloved wife Louise Alden, he tries to keep up with birthdays and other significant events for an ever growing Golden Horde of grown children, grand-children scattered across North America and a flying circus of treasured friends and accomplices. He tries, as advised by Gramsci, to maintain optimism of the heart and pessimism of the intellect. Most days he can manage this difficult balance for minutes at a time.

Kirk Tousaw



Kirk Tousaw is barrister and social justice advocate based in Vancouver, BC. He operates his own law practice, focusing primarily on criminal and constitutional litigation, and is also an associate of Conroy & Company, Barristers and Solicitors based in Abbotsford, BC. Kirk began practicing law in 1998 in the United States and has a background in business litigation, criminal defence and social justice advocacy pursuant to the Canadian Charter of Rights and Freedoms. He has been a practicing member of the Law Society of British Columbia since 2005. Academically, Kirk holds a Bachelor's of Art in political philosophy (Michigan State University) a Juris Doctor, cum laude (Wayne State University School of Law) and a Master's in Law (University of British Columbia Faculty of Law). Kirk has completed two years of doctoral studies at the UBC Faculty of Law and is presently awaiting the opportunity to return to his studies and obtain the degree. Kirk and his wife Debbie are parents to three wonderful children, Kaya (age 8), Caiden (age 3) and Oaklen (age 2). Kirk is active in the community, volunteering as the Chair of

the Drug Policy Committee of the British Columbia Civil Liberties Association and is a member of that Association's Board of Directors. Kirk has written and spoken extensively on issues related to drug policy, privacy, religious freedom and criminal justice policy. In addition, Kirk has had the privilege of testifying several times before the Standing Committee on Justice and Human Rights of the House of Commons and also before the Senate Standing Committee on Legal and Constitutional Affairs.

Reg Whitaker

Reg Whitaker is Distinguished Research Professor Emeritus at York University and Adjunct Professor of Political Science at the University of Victoria. Recent books include *The End of Privacy: How Total Surveillance is Becoming a Reality* (1999) and *Canada and the Cold War* with Steve Hewitt (2003). He served on the Advisory Panel to Justice O'Connor on the Commission of Inquiry into the Maher Arar affair; chaired the Advisory Panel to the Minister of Transport reviewing the Canadian Air Transport Security Authority Act in 2006; and is currently advising the Commission of Inquiry into the Air India bombing on the aviation security aspects of the Air India bombing.

Eric Wyness



Born in Vancouver but out of wedlock, I was adopted into a family famed for the James Inglis Reid Scottish butchery, a fixture of downtown Vancouver for the bulk of the last century. As a teenager in the 60's I embraced the creative spirit of the time and much to the disappointment of my family became a musician and allied myself with the worldwide movement for a more tolerant, more open society. Keen in my memory of those turbulent years were encounters with the late Bob Hunter (an instrumental figure in Greenpeace), a brilliant, passionate lecture on Thoreau by the UBC professor Kay Stockholder (a Past President of BCCLA) and a remarkable evening with the remarkable Isaiah Berlin, the 20th century's great champion of diversity of views, of pluralism of values. Similar feelings of "not in my Canada, you don't!" were raised by the 1997 APEC débâcle; I filed an official protest (along with 50 other Canadian citizens, UBC and the BCCLA) and endured two and a half years of hearings before I presented a final argument to Commissioner Ted Hughes that a key government witness had given substantially unreliable testimony. Apparently I had been pushing on an open door. In his final report, Ted Hughes concurred. I've been drawn more and more to civil liberties issues, as our freedom to think and feel as we wish seems increasingly threatened by authoritarian bullies of all stripes. In my experience, those who airily 'know what's best for us' are the ones whose pat answers need the most skeptical questioning. My gift of \$47,000 to the BCCLA was inspired by what Thoreau told Emerson on the abolition of slavery: you only start fully living when you stand up for what is right – exactly at the times it would be so easy to look aside and do nothing.

**Pages 57 to / à 64
are withheld pursuant to section
sont retenues en vertu de l'article**

69(1)(e)

**of the Access to Information Act
de la Loi sur l'accès à l'information**



SCENARIO
NUMERO DU DOSSIER/FILE #: 2016-006137
COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: PROTECTED B

TITRE/TITLE: Meeting with the British Columbia Assembly of First Nations

SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY

- You will be meeting with the British Columbia Assembly of First Nations on March 29, 2016. The meeting will focus on four items: 1) the national inquiry into missing and murdered Indigenous women and girls; 2) the *Williams Lake* specific claim decision; 3) the 2016 Federal Budget; and 4) the overall relationship and engagement with Indigenous peoples.
- The Final Report of the Truth and Reconciliation Commission called upon the federal government, in consultation with Aboriginal organizations, to appoint an inquiry into missing and murdered Indigenous women and girls. Pre-meetings were conducted across Canada with victims' families, Aboriginal organizations, and other stakeholders to hear their views on the design and objectives of the inquiry. The 2016 Federal Budget has announced dedicated funding of \$40 million over two years to support the work of this inquiry.
- On February 29, 2016, the Federal Court of Appeal (FCA) allowed Canada's application for judicial review and set aside the decision of the Specific Claims Tribunal in *Williams Lake Indian Band*. The FCA noted that this was an appropriate case for the Court to substitute its decision for that of an administrative decision maker. The FCA found that Canada's post-Confederation conduct in purchasing land and allotting reserves for the Williams Lake Indian Band remedied any possible earlier breaches by the Colony of British Columbia, and fulfilled any possible fiduciary duty owed by Canada. The Band has 60 days to file an application for leave to appeal to the Supreme Court of Canada.
- Budget 2016 proposes to invest \$8.4 billion over five years, beginning in 2016–17, to improve the socio-economic conditions of Indigenous peoples and their communities and bring about transformational change. This represents a significant increase over the investments that would have been made under the Kelowna Accord. The unprecedented scale of this investment underscores the Government's intent to renew the relationship between Canada and Indigenous peoples.
- The Government has made important commitments to renew its relationship with Indigenous peoples. This commitment will need to play out across government operations and form the basis for policy renewal wherever changes intersect with Indigenous interests. The work for this initiative is still in its early days and focused on renewing the nation-to-nation relationship.

Soumis par (secteur)/Submitted by (Sector):

Aboriginal Affairs Portfolio

Responsable dans l'équipe du SM/Lead in the DM Team:

Adam Garskey

Revue dans l'ULM par/Edited in the MLU by:

Olivier Cullen

Soumis au CM/Submitted to MO: 29 March 2016



Protected B
SCENARIO

2016-006137

MEMORANDUM FOR THE MINISTER

Meeting with the British Columbia Assembly of First Nations

ISSUE

You will be meeting with the British Columbia Assembly of First Nations (BC AFN) on March 29, 2016. The meeting will focus on four issues: 1) the national inquiry into missing and murdered Indigenous women and girls (MMIWG); 2) the *Williams Lake Specific Claims* decision; 3) the 2016 Federal Budget; and 4) the overall relationship and engagement with Indigenous peoples.

CONSIDERATIONS

National inquiry into missing and murdered Indigenous women and girls

The Truth and Reconciliation Commission Final Report called upon the federal government, in consultation with Aboriginal organizations, to appoint an inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls.

BC AFN Regional Chief Gottfriedson is a member of the British Columbia-based Coalition on MMIWG that came together over concerns regarding lack of progress on the recommendations from the Missing Women Commission of Inquiry (i.e., the Oppal Inquiry).

The National Assembly of First Nations (AFN) chiefs called for the inquiry to be established in accordance with the federal *Inquiries Act* to ensure full powers to compel the provision of evidence and appearance of witnesses and to include the child welfare system, policing approaches to investigations of MMIWG, and full consideration of root causes. The AFN held an additional meeting in February 2016 to inform its views on the design of the inquiry and provided additional feedback from participants to the government. They also recommended that results coming out of the inquiry must be accompanied by a full implementation plan: something that was absent from the Royal Commission on Aboriginal Peoples, for example.

In response to these calls for action, the Government of Canada, led by yourself and the ministers of Health and Status of Women, conducted meetings across Canada with the families of missing and murdered Indigenous women and girls, other Indigenous peoples, national Aboriginal organizations, and various stakeholders in order to hear their views on the design and objectives of the inquiry. Approximately 2,000 individuals shared their views regarding the structure of the inquiry by attending one of the 18 meetings held across Canada. Others shared their views and experiences online. The last pre-meeting was held on February 15, 2016.

Williams Lake specific claims decision

On February 29, 2016, the Federal Court of Appeal (FCA) allowed Canada's application for judicial review and set aside the decision of the Specific Claims Tribunal (Tribunal) in *Williams Lake Indian Band v. HMTQ*. The FCA noted this was a case where it was appropriate for the FCA to substitute its decision in place of the decision of the Tribunal. The Band has 60 days to file an application for leave to appeal to the Supreme Court of Canada.

The Tribunal held as facts that the Indian Reserve Commissioner O'Reilly allotted significantly more reserve land than the colonial government had recommended. And, instead of relying on the province of British Columbia to provide all the lands for the Band's reserves, Canada had purchased sizeable lands for allotment as the Band's reserves. Moreover, the Chief of the Band had advised in 1881 that he was satisfied by these actions and was thankful the land question was settled. However, despite these facts, the Tribunal held that these actions did not remedy the breaches of legal obligations that occurred.

The FCA found that the Tribunal "proceeded upon a flawed principle and reached an unreasonable conclusion based on the facts of this case. Canada was required to act honourably in resolving the long-outstanding challenges of the Band and the evidence shows that Canada and the Commissioner did so...". The FCA noted that Canada's fiduciary duty did not require it to purchase land to create a reserve for the Band and that Canada acquired the land to remedy a situation that it had not created and which was unlikely to be redressed by the province in a timely manner.

2016 Federal Budget

Budget 2016 proposes to invest \$8.4 billion over five years, beginning in 2016-17, to improve the socio-economic conditions of Indigenous peoples and their communities and bring about transformational change. This represents a significant increase over the investments that would have been made under the Kelowna Accord. The unprecedented scale of this investment underscores the Government's intent to renew the relationship between Canada and Indigenous peoples.

A Better Future for Indigenous Peoples						
(in \$ millions)	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	Total
Rebuilding the Relationship	36	40	20	20	20	136
Education, Children and Training	460	774	806	993	1187	4,220
Social Infrastructure	503	607	53	36	20	1,219
Green Infrastructure	311	418	498	504	511	2,242
Other Initiatives	218	202	44	46	47	557
Total	1,528	2,041	1,422	1,600	1,784	8,374

Note: Totals may not add due to rounding

The following 2016 Budget highlights may be of interest to the BC AFN:

- \$40 million over two years toward the National Inquiry into Missing and Murdered Indigenous Women and Girls;
- \$20 million over two years to strengthen the First Nations Finance Authority's capital base;

- \$33.1 million to Fisheries and Oceans Canada to extend the Atlantic and Pacific Integrated Commercial Fisheries Initiatives.

Overall relationship and engagement with Indigenous peoples

The Government has made important commitments to renew its relationship with Indigenous peoples. This commitment will need to play out across government operations and form the basis for policy renewal wherever changes intersect with Indigenous interests. The work for this initiative is still in its early days.

The Department of Justice has advised that a renewed nation-to-nation relationship is a political goal, but it reflects a history of Crown/Indigenous relations. Nation-to-nation relations are not a revolutionary break with Canada's legal and constitutional order, but an evolution closer to the promise of section 35 of Canada's Constitution, as outlined in jurisprudence from the Supreme Court of Canada. Its aim is based on respect, cooperation, and partnership. To support a more inclusive vision of our society, the Department of Justice is proposing a generous, purposive reading of section 35 based on the honour of the Crown, and inspired by international norms and standards. A purposive reading will allow the federal government to fulfill its legal duties, and allow for ways to actively manage the Crown's side of its relationship with Indigenous peoples by being proactive, flexible, and integrated in the way it approaches mutual issues.



CONCLUSION

s.69(1)(g) re (a)

The Government is working diligently and making concrete strides on all of these important s.69(1)(g) re (c) issues. The 2016 Budget announcement of \$8.4 billion over the next five years to improve the socio-economic conditions of Indigenous peoples and their communities, including \$40 million over two years for the National Inquiry into MMIWG, is evidence of the Government's commitment to improving its relationship with Indigenous peoples.

PREPARED BY

Renée Piché
Senior Policy Advisor
Aboriginal Law Centre
613-907-3776



Department of Justice
Canada

Ministère de la Justice
Canada

FOR INFORMATION
NUMERO DU DOSSIER/FILE #: 2016-006465
COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: Protected B

TITRE/TITLE: *Prophet River First Nation and West Moberly First Nations v. Attorney General of Canada*



s.23

Soumis au CM/Submitted to MO: March 31, 2016

000069

**Pages 70 to / à 77
are withheld pursuant to section
sont retenues en vertu de l'article**

23

**of the Access to Information Act
de la Loi sur l'accès à l'information**